

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2499 of 2009

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Ghuran Jha s/o late Pt. Kalicharan Jha, r/v Mangrauni, P.S. Rajnagar, Madhubani
.... Petitioner/s

Versus

The Bihar State Electricity Bo

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. AJEY KUMAR

For the Respondent/s : Mr. VINAY KIRTI SINGH

Mr. Anand.K.Ojha

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 20-02-2017

Heard Sri Ajey Kumar, learned counsel for the petitioner and
Sri Anand Kumar Ojha, learned Standing Counsel for the Bihar State
Power Holding Company.

2. The petitioner by filing this writ petition seeks quashing of
order dated 01.08.2005 contained in Memo No. 199 (Annexure-8) and
further he seeks quashing of order dated 26.09.2007 (Annexure-12), by
which the appeal of the petitioner was dismissed without considering the
grounds taken in the memo of appeal.

3. The relevant facts for disposal of the writ petition are that
a departmental proceeding was initiated against the petitioner and after
enquiry the disciplinary authority withheld 10% of pension of the
petitioner holding him guilty that the petitioner during his tenure as Store
Keeper of Sakari Store did not prepare the Store Receipt Books and
Store Issuance Books. The petitioner filed appeal before the authority



but the Appellate Authority without considering the grounds of the petitioner dismissed the appeal. The petitioner preferred CWJC No. 6940 of 2005 and a Single Bench of this Court vide order dated 13.12.2006 passed in C.W.J.C. No. 6940 of 2005 allowed the petition and the order as contained in Annexure-11 (the order of the Appellate Authority) was set aside and the matter was remitted to the Appellate Authority to pass order afresh after considering the grounds and rules stated by the petitioner in his memo of appeal. The petitioner after disposal of the aforesaid writ petition appeared before the Appellate Authority and the Appellate Authority again passed order on 26.09.2007 as contained in Annexure-12.

4. The learned counsel for the petitioner again assailed the order stating that the petitioner took specific grounds in para (iii) and onwards in his memo of appeal with reference to the different rules of manual of stores, Rule 7.6 and onwards, but none of the ground was considered by the Appellate Authority and the Appellate Authority again reiterated the same fact. Therefore, the order is vitiated on the ground of non-consideration of the grounds taken by the petitioner and that amounts to violation of principle of natural justice.

5. Mr. Anand Kumar Ojha, learned counsel for the Bihar State Power Holding Company has submitted that the appellate authority considered the grounds and dismissed the appeal.

6. The memo of appeal filed by the petitioner (Annexure-9)



dated 05.03.2005 in which the petitioner has taken specific plea that it was not his duty to prepare Store Receipt Books and Store Issuance Books. The Assistant Engineer and the Executive Engineer were the controlling authority and they are responsible for preparation of SIB and SRB, but they have not been prosecuted. The petitioner has been singled out and discriminated.

7. The enquiry officer also found the charge proved on mere speculation, but the Appellate Authority did not consider any grounds of the petitioner and passed the order without giving any reason. The order does not show that the grounds were considered and disbelieved but 6% of pension of the petitioner is withheld. Therefore, order suffers from non-consideration of the plea that amount to violation of principle of natural justice and the order is vitiated.

8. Having considered the aforesaid facts, the writ petition is allowed. The order dated 26.09.2007 as contained in Annexure-12 is set aside. The matter is remitted to the Appellate Authority to pass order afresh in accordance with law within two months from the date of receipt of a copy of this order.

(Prabhat Kumar Jha, J.)

Rakhi

AFR/NAFR	
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

